

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN STEVEN OLAUSEN,

Petitioner,

vs.

E. K. MCDANIEL,

Respondent.

Case No. 3:05-CV-00631-LRH-(RAM)

ORDER

Before the Court is Petitioner Olausen's Petition for a Writ of Habeas Corpus (#1). The Court has reviewed the Petition (#1) pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

Olausen styles the Petition (#1) as pursuant to 28 U.S.C. § 2241 because he alleges that he is being held in Ely State Prison not pursuant to any judgment of conviction. Olausen has already verified, under penalty of perjury, that he is being held in custody pursuant to an amended judgment of conviction. Olausen v. Helling ("Olausen I"), Case No. 3:01-CV-00499-ECR-(RAM), Fourth Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (#58), at pp. 1, [29]. The Court denied Olausen I on the merits. Id., Order (#86). Olausen is in custody pursuant to a judgment of conviction in a state court, and thus 28 U.S.C. § 2254 and all of its attendant restrictions apply, regardless of how Olausen styles his Petition (#1). White v. Lambert, 370 F.3d 1002, 1006-07 (9th Cir. 2004).

Because the Court denied Olausen I on the merits, this action appears to be a second or successive petition that Olausen improperly filed without first obtaining an order of authorization

1 from the United States Court of Appeals for the Ninth Circuit. 28 U.S.C. § 2244(b)(3)(A). If so,
2 then this Court cannot consider the Petition.

3 Olausen has also submitted an Application to Proceed in Forma Pauperis (#2), which
4 is moot because he has already paid the filing fee.

5 IT IS THEREFORE ORDERED that within thirty (30) days of entry of this Order
6 Petitioner shall show cause why this action should not be dismissed for Petitioner's failure to
7 comply with 28 U.S.C. § 2244(b). Failure to comply will result in the dismissal of this action.

8 IT IS FURTHER ORDERED that Petitioner's Application to Proceed in Forma
9 Pauperis (#2) is **DENIED** as moot.

10 DATED this 8th day of March, 2006.



LARRY R. HICKS
United States District Judge